

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105

NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING

RH399

DATE: March 15, 2002

SUBJECT OF HEARING:

A hearing will be held regarding proposed changes to the fair claims settlement practices regulations found at California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.1 through 2695.14.

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes to adopt, amend and repeal specified portions of the subject regulations under the authority of Insurance Code Sections 790.10, 12921, and 12926. The Commissioner's decision on the proposed changes to the regulations will implement, interpret and make specific provisions of Insurance Code Section 790.03(h).

HEARING DATE AND LOCATION:

Notice is hereby given that public hearings will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to these regulations as follows:

Date and time: May 8, 2002  
10:00 am  
Location: 45 Fremont Street  
22<sup>nd</sup> Floor Hearing Room  
San Francisco, CA 94105

Date and time: May 9, 2002  
10:00 am  
Location: Department of Insurance Hearing Room  
Ronald Reagan State Office Building  
300 South Spring Street, 1<sup>st</sup> Floor  
Los Angeles, California 90013

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the

scheduled public hearings. Written comments not presented should be addressed to the following contact person:

Risa Salat-Kolm, Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: (415) 538.4127

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Cindy A. Ossias, Senior Staff Counsel  
45 Fremont Street, 21st floor  
San Francisco, CA 94105  
Telephone: (415) 538.4124

DEADLINE FOR WRITTEN COMMENTS:

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00** on May 9, 2002. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [salat-kolmr@insurance.ca.gov](mailto:salat-kolmr@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Chapter 5, Subchapter 4.5, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address, in order to inquire about the appropriate procedures:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST:

SUMMARY OF EXISTING REGULATIONS AND POLICY STATEMENT OVERVIEW:

California Insurance Code Section 790.03(h) sets forth sixteen claims settlement practices which, if knowingly committed or committed with such frequency as to indicate a general business practice, are held to be unfair claims settlement practices. The Commissioner is empowered under Insurance Code Section 790.10 to promulgate rules and regulations, and amendments and additions thereto, as are necessary to administer Section 790.03(h) and related sections. The Commissioner has previously promulgated regulations found at California Code of Regulations, Title 10, Section 5, Subchapter 7.5, Sections 2695.1 through 2695.14. The Commissioner has determined that certain modifications to these regulations are necessary in order to effectively administer Insurance Code Section 790.03(h). The amendments to the regulations would do the following:

- 1) Reorganize the subsections so that they are easier to understand and use.
- 2) Add or delete language for reasons of grammar or clarity.
- 3) Eliminate unnecessary portions of the regulations in cases where existing laws adequately cover the subject area.
- 4) Add subsections or portions of subsections where necessary to set forth reasonable standards of conduct in the handling of claims.

EFFECT OF PROPOSED ACTION:

The major effects of the regulations are as follows:

Section 2695.1(c) - Surety Claims (Repeal)

Existing subsection 2695.1(c) specifies that certain regulations do not apply to the handling or settling of claims brought under surety bonds. The proposed change is to repeal this subsection. Even though a unique tripartite relationship exists between the surety insurer, the beneficiary of the surety bond, and the principal, the claims handling process is no more cumbersome with respect to the processing of these claims than in the more traditional first or third party claims setting. As such, certain minimum standards set forth in the regulations should and do apply to claims brought under surety bonds. For example, section 2695.7 of the regulations does not impede the surety's ability to conduct its business

efficiently and fairly and in accordance with California Insurance Code section 790.03(h).

Section 2695.1(b) and (c) - Home Protection (Amend and Adopt)

The proposed amendments clarify and codify the Department's determination that the Fair Claims Settlement Practices Regulations apply, as a matter of law, to claims brought under home protection contracts written by home protection companies (and respond directly to a decision of an administrative law judge to the effect that the provisions of the Fair Claims Settlement Practices Regulations do not apply to home protection companies or home protection contracts). There is no legal or equitable justification for treating home protection contract claims differently than other similar claims, or home protection companies differently than similarly situated licensees.

Section 2695.1(e) - Minimum Claims Standards (Adopt)

Since the adoption of these regulations in 1993, the Department has witnessed several instances of insurers developing insurance contract language in order to circumvent one or more of these regulations. As an example, even though the regulations require an insurer to include sales tax in an automobile total loss settlement, some insurers placed into their contract a provision that precludes payment of sales tax. If insurers are permitted to circumvent the regulations by contracting certain consumer protections out of the insurance policy, it defeats the purpose of having minimum claims handling standards. In order to maintain the integrity of these regulations and create uniformity in the claims handling practices of insurers, subsection (d) was adopted.

**Section 2695.8. Additional Standards Applicable to Automobile Insurance.**

The regulations dealing with automobile insurance claims underwent the most change during this amendment process. Automobile insurance is the most prevalent coverage and automobile insurance claims affect the most consumers in California. The Department receives thousands of consumer complaints each year providing substantial input from insurers and consumers on all aspects of automobile insurance claims. The amendments proposed to this section are a direct result of this input.

In reference to total loss claims, the significant changes include (1) requiring third party claims to be held to the minimum standards set forth in the regulations; (2) clarifying the principle that sales tax and license fees are a necessary component of any total loss settlement; and (3) qualifying the definition of "comparable vehicle." See Section 2695.8(b).

Other changes to this section include setting minimum standards for insurers that direct, by insurance contract, that an insured utilize a network of specific auto body repair shops. These insurers charge a 20% co-payment penalty if the insured has the auto repaired in a non-network

shop. The unique nature of these contracts requires particular disclosure and claim settlement standards. See Section 2695.8(g).

#### **Section 2695.85. Auto Body Repair Consumer Bill of Rights**

This new section is adopted under the authority of implementing recently enacted Senate Bill SB1988, which became effective January 1, 2001 and created new California Insurance Code Sections 1874.85 and 1874.87. Under California Insurance Code Section 1874.87, the Department was required to develop an Auto Body Repair Consumer Bill of Rights as a standardized form. This standardized form was developed after consultation with industry and consumer groups. Insurers are now required to provide their insureds with this form. This section interprets and clarifies the new insurance code section and answers some of the questions brought up by the industry. This section also dictates the exact language to be used in the standardized form.

#### **Section 2695.9. Additional Standards Applicable to First Party Residential and Commercial Property Insurance**

Major amendments to this section include (1) prohibition of an insurer's withholding of a general contractor's overhead and profit if those costs are likely to be incurred; (2) providing minimum standards for estimating property damages and directing insureds to insurer-chosen contractors; and (3) addressing the problem of delay in the appraisal process caused by insurers that request discovery, subpoenas of evidence, expert testimony and other tools associated with civil litigation.

#### **Section 2695.12. Penalties**

This section is currently entitled "Noncompliance and Penalties". The major change made to this section reflects the position that while certain factors are relevant to mitigate the penalties to be assessed, these factors do not render a non-compliant act compliant. Another change is to repeal subsection 2695.12(a) as the term "knowingly" is defined in subsection 2695.2(1) of the regulations.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

#### COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that there will be no cost or savings, discretionary or nondiscretionary, to any local agency, state agency or school district from the proposed regulations, and that the proposed regulation will not affect federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed amendments may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers and claims agents as defined under the current regulations. There will be additional record-keeping requirements imposed upon certain insurers that have not previously been subject to these regulations. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

#### IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed amendments may affect small businesses to the extent independent insurance adjusters (as opposed to those who are insurance company employees) qualify as small businesses. These individuals and entities will be required to comply with the applicable amendments.

#### COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

#### TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed changes to the regulations. Upon **written or e-mailed** request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon **written or e-mailed** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

#### AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

#### WEBSITE POSTINGS:

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the top of the page the major heading 'Protecting Consumers.' In this section, scroll down until you see the subheading 'BE INFORMED.' Click on the nearby 'Search for Proposed Regulations' link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter 'RH399' (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "790.03"), or search by keyword ('fair,' for example, or 'settlement'). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Fair Claims Settlement Practices" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated:

2002

HARRY W. LOW

Insurance Commissioner

By

Jerry L. Whitfield

Deputy Commissioner



